

REMARK

I. INTRODUCTION

Claims 39 to 97 are pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

II. REJECTION OF CLAIMS 39 TO 97 UNDER 35 U.S.C. § 112

Claims 39 to 97 were rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite. The Office Action merely alleges that “[c]laims 39-97 are replete with antecedent basis problems making the claims difficult to understand and examine properly with so many as to make it difficult to list them all.” The Office Action, however, does not indicate even a single instance of any phrase or term of even a single claim that is considered to lack antecedent basis or have an “antecedent basis problem.” As stated in M.P.E.P. § 2173.05(e), “[t]he examiner’s task of making sure the claim language complies with the requirements of the statute [35 U.S.C. § 112] should be carried out in a positive and constructive way, so that minor problems can be identified and easily corrected, and so that the major effort is expended on more substantive issues.”

The question of whether there is sufficient antecedent basis for a claim term is determined under the definiteness requirement of 35 U.S.C. § 112, second paragraph. The “examiner’s focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available,” and “[t]he essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity.” M.P.E.P. § 2173.02 (emphasis added). “Definiteness of claim language must be analyzed, not in a vacuum, but in light of[, inter alia, the] content of the particular application disclosure[and the] claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.” Id. If the claims, when read in light of the Specification, reasonably apprise those skilled in the art both of the utilization and scope of the claimed subject matter, and if the language is as precise as the subject matter permits, the second paragraph of 35 U.S.C. § 112 demands no more. M.P.E.P. § 2173.05(a) (citing

Shatterproof Glass Corp. v. Libbey Owens Ford Co., 758 F.2d 613, 225 U.S.P.Q. 634 (Fed. Cir. 1985)).

Furthermore, even the failure to provide explicit antecedent basis for a claim term -- which Applicant does not concede exists in any of the present claims -- does not necessarily or always render a claim indefinite. M.P.E.P. § 2173.05(e). In this regard, the standard for determining definiteness is that “[I]f the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite.” Id. (emphasis added) (citing Ex parte Porter, 25 U.S.P.Q.2d 1144, 1445 (Bd. Pat. App. & Inter. 1992)).

The assertion in the Office Action that “[c]laims 39-97 are replete with antecedent basis problems making the claims difficult to understand and examine properly with so many as to make it difficult to list them all,” without any indication whatsoever of any term or phrase of any claim that is considered to lack antecedent basis, is apparently nothing more than an improper omnibus rejection and is so uninformative as to fail to comply with the requirements of 35 U.S.C. § 132 and 37 C.F.R. § 1.104.

Moreover, it is not readily apparent that any term or phrase of any claim lacks sufficient antecedent basis or is otherwise indefinite. In view of all of the foregoing, it is respectfully submitted that the present claims fully comply with the definiteness requirement of 35 U.S.C. § 112, and withdrawal of this rejection is therefore respectfully requested.

III. Double Patenting Rejection

As regards the rejection of claims 39 to 97 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1 to 103 of U.S. Patent No. 6,739,774, the Examiner will note that enclosed herewith is a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c). Withdrawal of this rejection is therefore respectfully requested.

IV. **CONCLUSION**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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